

NORTHERN TERRITORY LICENSING COMMISSION

REASONS FOR DECISION

PREMISES: MPWETYERRE TOWN CAMP

DATE OF DECISION: 8 Aug 2000

DATE OF HEARING: 16, 17, 18 May 2000

Application: Application for a Restricted Area

Applicant: Mr Kevin Wirri, Mpwetyerre President

**Heard Before: Mr John Withnall (Chairman)
Mrs Annette Milikins (Member)
Mrs Shirley McKerrow (Member)**

**Appearances: Mr John Stirk for
Alice Springs Police
Mr Christopher Howse for
Mpwetyerre Town Camp**

The Mpwetyerre Town Camp, also known as Abbott's Camp, comprises a Special Purposes Lease of some 1.5 hectares (a little over three acres) fronting South Terrace in Alice Springs. It comprises Lot 2664 of the Town of Alice Springs, and Register Book Volume 191 folio 63 at the Land Titles Office shows the registered proprietor of the allotment as Mpwetyerre Aboriginal Corporation. In August 1998 three of the then office holders of the Corporation applied to the (then) Liquor Commission for the camp to be declared a liquor-restricted area pursuant to section 74 in Part VIII of the Liquor Act ("the Act").

The application was heard by the Chairman of the Commission sitting alone, and on 13 December 1999 he handed down written reasons for his decision not to make the declaration.

Thereafter, the new President of the Mpwetyerre Aboriginal Corporation applied for a re-hearing of the application on behalf of the original applicants. The option of a re-hearing is provided by section 51(10A) of the Liquor Act. The Northern Territory Police were granted leave to appear before the Commission at the new hearing and expressed their concerns, as they had done at the first hearing. There were no other "objections" to the application, ie. persons expressing an (unfavourable) opinion under section 78 of the Act, but this is hardly surprising given the absence of any provision in the Act enabling or allowing for advertisement to or within the broader community. We shall address this situation in more detail later in these reasons.

The matter proceeded as a hearing de novo before a panel of three members of the Licensing Commission on 16 May 2000.

Towards the conclusion of the time which the Commission had allocated to the hearing, it was agreed by counsel respectively representing the applicants and the police that final submissions would be made in writing. Mr Stirk, counsel for the police, sought an adjournment of the hearing so that the matter might encompass the then forthcoming report of a survey into liquor problems in Alice Springs then being conducted under the administration of the Alice Springs Town Council and under the auspices of the Alice Alcohol Representative Committee ("AARC"), a grouping of various regional bodies on the initiative of the Alice Springs Alcohol Issues Forum.

The Commission then imposed on counsel a time frame for submissions which should have resulted in the Commission being in receipt of all written submissions by the end of May.

Submissions from Mr Howse, counsel for the applicant, were soon received by the Commission, but no written submission was received from counsel for the police until the end of June, as a result of which the AARC survey report was published (in early July) while the Commission was still considering this application.

In considering whether to grant an adjournment to encompass a study of the AARC report (which is actually entitled "Dollars Made From Broken Spirits", and is also being referred to as "the Hauritz report") it is immediately obvious that a major issue is whether in relation to the present application the opinion of the broader community

can be taken into consideration in any event. Mr Stirk submits that section 32(2) of the Act (investigation of community needs and wishes) "is in similar terms to section 79.2". The similarity of terminology is undeniable, but the expressed purpose of each sub-section is quite different; section 32(2) allows investigation for the purpose of the Commission informing itself on the matters to be considered in determining whether or not to grant an application for a licence, and section 79(2) allows investigation only for the purposes of ascertaining the opinions of "people who reside in the relevant area", ie. only people who reside within the area the subject of the application for declaration.

Mr Stirk submits that the applicants are seeking a concession under the Act which can be seen to be much in the way of a licence under the Act, and the Commission cannot be expected to have to exercise its discretion in a vacuum.

There is an obvious argument against the importation of section 32 considerations into Part VIII, which of course is not dealing with licences. While Part VIII does provide that *any* person may express an opinion regarding an application for a restricted area (section 78), section 79 provides that it is only the people who reside in the subject area that must be informed by the Commission of the existence of that right. There is no provision for publicising at large, and as mentioned the only specific power of investigation is limited to ascertaining the opinions of residents of the subject area. Section 80 provides the only criteria for the Commission's consideration of a Part VIII application: the Commission must consider the advice of any relevant municipal or community government council, and the opinions received either under section 79 (from residents in the subject area) or section 78 (anybody else at all), but there is no provision for this last mentioned group --other than potentially affected licensees -- to be made aware of the application having been made or to be notified of any hearing date.

The only formal notifications seemingly permitted by the Act were to licensees with the potential to be affected, the Alice Springs Town Council and the residents of the relevant area itself. We note that in this case the application was also originally notified by the then Registrar of the Liquor Commission in Alice Springs to the Department of Education (which had no objections) and to Territory Health Services (which expressed full support for "community" initiatives leading to a reduction of alcohol related harm) and the Territory police in Alice Springs (who expressed their concern). On a strict reading of the Act, the power of the Registrar to canvass opinions from these additional sources may well have been suspect (but both counsel agree that now that such opinions are before us they should be considered in our deliberations).

Normally with applications for restricted areas the limited provision in Part VIII of the Act for notification and consideration of the application is not an issue, as in outlying areas (which have comprised almost all of such applications in the past) the *whole* community in whose midst the "dry" area is sought is itself the applicant for the declaration, and the scheme of section 79 of the Act obviously sees this situation as the norm. Admittedly there is *prima facie* nothing about Part VIII or the Liquor Act as a whole to suggest that an application cannot be made in relation to a suburban allotment in a town, but in that situation the shortcomings of the provisions of Part VIII

in relation to the Commission ascertaining the opinions of the broader community are highlighted.

Section 51(3)(d) of the Act is of no assistance, being only procedural.

Part VIII can be argued to have intended to “cover the field” in relation to restricted area applications and considerations, and that therefore the scheme of that Part is mandatory. This is the Commission’s preferred view. We see sections 77 to 80 of the Act as being intended to be the complete scheme for the Commission to become seised of all evidence which it may take into account in considering an application for a declaration of a restricted area. So saying, however, does not of itself limit those matters which the Commission may allow or require to be part of that evidence. The source and *content* of written or oral “opinions” complying with section 78 is limited only by normal considerations of relevance, and a particular aspect or topic will not be denied relevance *at a hearing* for the reason only that it was not one of the matters which section 79 empowered the Commission itself to have investigated on its own initiative *prior to the hearing*.

In the Commission’s view, opinions as to the needs and wishes of the broader community of a township are relevant to the consideration of an application for a restricted area within that town. We are comforted in that view by section 62A of the Interpretation Act, which provides that in interpreting a provision of an Act, a construction that promotes the purpose or object underlying the Act is to be preferred, even though the purpose or object not be stated in the Act. As Mr Howse himself submitted, the Liquor Act “is diffused with provisions that are underpinned with the principle that the safety of the community and its quality of life are paramount considerations”. We emphasise: quality of life of *the community*.

However, we are of the opinion in the present case, given its particular history, that we should defer to Mr Howse’s position that in any event it is now too late to expect the applicant to have to undergo any further delay while broader community opinion is canvassed and the hearing necessarily reconvened at some later time for the parties to deal with any such additional material.

The Commission has decided not to grant any adjournment, and will now proceed to decide the application on the evidence which was put before it. Any strategies which may be contained in, or which may arise out of, the AARC report which may have assisted the applicants will require careful and detailed consideration in the context of the relevance and application of the report to Alice Springs as a whole. Even if we were to consider the report in making our decision in the present matter, the probability is that we would be unable to immediately import any survey data into the parameters of this application. A proper application of due process and consideration in relation to the report may well be “six months down the track” as Mr Howse complains in his written submission, and we accede to Mr Howse’s request to determine the matter on the respective cases which have been presented to the Commission to date.

We look then at the evidence before us.

Abbott's Camp comprises some six houses, or five houses and a large ablution block. From being an "abyss of violence" and a "Vietnam" of humpies, tents and car bodies, the efforts of former President Kevin Wirri and his wife Doris Abbott have been instrumental in improving the living standards at the camp to the extent of it receiving awards in the Tidy Towns competitions. Doris and her sister Louise, wife of current President Leslie Brokus, are said to be traditional owners of the property. Their commitment to a better lifestyle at the camp is undoubted. However, alcohol-related violence and disturbance remains an ongoing problem, and this application "is to break out of the cycle of despair" (per Dr McIntyre).

While the problem centres mainly on visitors bringing alcohol onto the premises, there are certainly problematical permanent residents as well; "river warden" Mr Eddie Taylor refers to fighting at the camp as a result of overcrowding, and Doris Abbott after describing the recalcitrants as "some locals and some visitors" testified that *half the people who live there* "want the grog". Natalie Smark, housing co-ordinator with the Tangentyere Association, explained that while there were no votes against the resolution of the "Mpwetyerre Housing Association" (at a meeting in May 1998) to apply for restricted area status, only "house bosses" are members of the corporation entitled to vote, such that there were permanent residents in the camp who were not entitled to vote on the proposal. She is convinced however that the majority of residents are resolved to accept restrictions on their ability to drink within their own premises in order to improve the quality of life within the camp.

It is clear that the major problem at the core of this application is the importation of liquor into the camp by visitors.

Part of the improvements rendered to the premises by the applicants and their committee has been a high steel fence on the street boundaries, which with its lockable gate is conceded to be capable of physically excluding unwanted persons, although Ms Smark does recall occasions on which it was damaged to the point of permitting illegitimate entry. Mr Wirri tells us that the house rules against grog are not respected by visitors who import liquor into the community and he needs to be able to say that the camp is dry not because he says so but because the law says so. The situation prompts the question why a committee so determined to enforce a no grog rule does not simply utilise the security of the exclusionary perimeter fencing by locking the gate at night against unwanted callers with cartons of trouble.

One of the answers was that the residents had problems with gate key management, and there were ongoing problems with the allocation of keys and the maintenance of a key supply for those entitled. By far the biggest problem with the gate however, stems from the cultural structures and traditional extended-family connections that are said to make it difficult to deny entry to many troublemakers. The camp is a gathering place for people from out of town, and too many of the visitors who for cultural reasons are not denied entry fail to accord the association the necessary respect for the house rules. Indeed, one observation was that they are immune from discipline.

The system of trespass notices has been found by the committee to be cumbersome and stressful, and has rendered both Kevin Wirri and Doris Abbott vulnerable to "payback" attack, as is the case with the current president. All have suffered injuries

from payback violence. Eddie Taylor explained the inefficiency of the trespass notice mechanism as being that it "says you can't come in at all, and this brings shame to Mr Wirri. We just want their grog taken off them, or to stop them drinking there".

Mr Stirk's cross-examination in this area was along lines suggesting that the same cultural pressures that prevent exclusion of visitors by way of locking the gate against them and which render the trespass notice mechanism so confrontational would continue to work against the police being called even if the premises became an alcohol-restricted area. It was the response of many witnesses on behalf of the application that what was wanted was for the police on callout to the camp to have the additional powers provided by the Liquor Act in relation to dry areas. Mr Wirri had a clear subjective view of the benefits of the police having such additional powers: it would be good for him to be able to say that the camp was a dry area not because he says so but because the police say so, and if people try to bring in grog in a car boot, it would be good to have police seize the vehicle. The Commission cannot help but note the irony here, given that the Central Australian Aboriginal Legal Aid Service is currently threatening litigation to have the seizure and forfeiture provisions of the Liquor Act in relation to restricted areas held to be constitutionally invalid.

The police position as presented is primarily fourfold: (1) underlying causes and effects of alcohol use and abuse at the camp are complex, and a simple declaration as a restricted area would provide no panacea for the problem; (2) a restricted area within an urban setting is inappropriate and ineffective, primarily because of the ready availability of liquor and the consequential need to set aside some area or areas for drinkers; (3) declaration of the camp as a restricted area will place an additional and impractical burden on police resources; (4) the problems are broader than the application acknowledges, and what is required is the development of broader strategies and initiatives addressing the complexities of alcohol related problems across the broader Alice Springs community.

The police summation of the police position is that the problems of the Mpwetyerre Town Camp are principally management problems, for which primary responsibility must continue to be borne by the management committee, which will continue to receive an appropriate level of support from the police.

We now consider the strength of the foregoing police submissions.

Is there expectation at the camp that the declaration of the camp as a restricted area will provide an instant fix? Many articulate and obviously sincere witnesses in support of the restriction were of the opinion that a proper view of the application was that it would simply add another string to the police bow on callouts, and would be perceived as but one of a "raft" of measures to be brought to bear on the situation over time. Eddie Taylor thought that it would be some time before a dry area declaration would create a "turning point" in the management of problem drinking at the camp.

However, the evidence of Mr Kevin Wirri, supported by his wife Doris Abbott ("same story"), does suggest to the Commission that the applicants, as distinct from their supporters and advisers, do have an unrealistic immediate expectation of the declaration. Mr Wirri and Ms Abbott are the applicants. Mr Wirri was cross-examined

by Mr Stirk on his evidence that at the present time he always calls the police whenever there is a problem which "we cannot sort out ourselves", and the police always attend, albeit often taking too long to arrive. He quite clearly stated his belief that making the camp a dry area would result in the police attendance on callouts to the camp being quicker. If police response times could be improved (which we are not suggesting is a conclusion of the evidence) it is difficult to see the declaration as a restricted area as achieving that anticipated outcome.

Mr William Tilmouth, a co-ordinator with the Tangentyere Council for many years and now its Executive Director, thinks that the police will have an obligation to patrol the dry area "to maintain it as a dry area" and not necessarily wait for call-outs.

Mr Michael Bowden, manager of community development at Tangentyere, says that the application is not an initiative to have drinkers go somewhere else, but is to have them drink less. Such a goal is of course most laudable and supportable, but realistically would appear to be an optimistic expectation of a "dry" area in the midst of the readily accessible liquor outlets of urban Alice Springs. Counsel for the applicant agrees that there is no evidence that visitors want to learn about responsible drinking.

Is the declaration impractical or inappropriate within the urban area of Alice Springs? Can the urban setting be seen to be problematical if declared a restricted area? Mr Geoff Shaw, ex-President and current Treasurer of Tangentyere Council, confirmed that the town of Alice Springs has always been a hub for Aboriginal society. Mr Wirri gave evidence that Abbott's Camp is itself a hub within Alice Springs for some five or six tribal groups who regularly stay there. Almost all existing liquor-restricted areas are outlying from townships and well outside of practical walking distances from the nearest takeaway liquor outlets. Even so, as Superintendent Moseley points out, drinkers in remote dry areas may lawfully drink immediately outside the dry area, in the buffer zones. Abbott's Camp on the other hand is surrounded by liquor outlets; several residents of the camp identified three nearby outlets: BP Gap Service Station, Piggly Wiggly's Supermarket and the Queen of the Desert Bottle Shop, and there is simply no way of patrolling the supply and transportation of liquor into the dry area. There is nowhere immediately outside the camp, or indeed within two kilometres of the named outlets or of any other takeaway outlet at all, where drinkers may lawfully consume liquor, nor will being a dry area have any effect in relation to the entry onto the premises of a visitor who has taken advantage of the easy nearby availability of liquor to arrive already intoxicated. There is no offence of being intoxicated within a restricted area; the policing initiative for that situation will remain section 128 of the Police Administration Act, as it will for disturbances just outside the premises which the police say comprise the bulk of their callouts to the camp.

All stakeholders in these proceedings are agreed that a broader strategic approach is necessary, variously described by witnesses in support of the application as a raft of measures or a multi-stranded fence. The essential difference between the applicants and the police is that the Association wants this particular plank in the raft or strand of the fence to be trialled forthwith.

What are the anticipated additional burdens on police resources? Superintendent Moseley concedes that the police in Alice Springs could not be said to be under-

resourced, although there may be some juggling of rosters in remaining continuously response-ready 24 hours a day, but the problem he foresees developing with a declaration of the town camp as a dry area is that any callout on a complaint related to Part VIII of the Liquor Act, or for that matter any resolution of a disturbance by utilisation of powers under the Liquor Act, has to be followed up and finalised. Such callout must be attempted to be followed up by summons and Court process, and would be flagged an outstanding job until so finalised. Superintendent Moseley is adamant that existing police powers are adequate in the case of alcohol based disturbances at Abbott's Camp. He unequivocally stated that if the camp management didn't want somebody there drinking, then the police would remove such persons for them. The relevant exchange between Superintendent Moseley and Mr Howse is reproduced hereunder:

If this application is unsuccessful it will be legal, continue to be legal to drink alcohol in the camp won't it?-----Not if they don't want it drunk there. If they don't want people sitting there drinking they call the police and we'll have them removed.

There will be no offence attached to that will there?-----No

So you remove a trespasser under section 128(1), they are not charged with any offence are they?-----No, but why do we have to charge with an offence, we are about solving the problem of drinking in the camp.

They won't be charged with an offence?-----No, but it solves Mpwetyerre's problem.

The Commission notes that the power of the police by virtue of section 128 of the Police Administration Act is to apprehend without warrant any person reasonably believed to be intoxicated with alcohol either in a public place *or trespassing on private property*. (Section 46A of the Summary Offences Act is also a powerful tool in relation to disturbances on private property). As it stands, the Mpwetyerre Association has the same rights of access to this police service as any other resident in Alice Springs, ie. if an intoxicated person does not have permission to be on premises, the police will remove him. The system of trespass notices is not relevant to this process; it is a mechanism for having somebody barred permanently or at least in the longer term. Part of the applicant's case is that quite often they will not want a person actually removed from the camp, but only the alcohol which he has brought in. The police counter-response at this stage of the debate is essentially that this highlights the basic problem at the camp as being principally one of management, and that the residents of the camp should have to take primary responsibility for those problematical persons whom they elect to let in.

The essential rationale of the application is that the Association wants to convert its house rules on grog into police rules; this renders the police a major stakeholder in the process, and their views on the role cast for them by the applicant must carry considerable weight, regardless of the disdain with which the applicant's counsel regards the police position. The applicants are seeking to be able to enlist some additional form of aid from the police, over and above that available to other urban residents of Alice Springs, and in that situation it surely cannot behove the applicants to be so dismissive of the expressions of disquiet from those on whom will fall the responsibility of meeting the applicant's expectations of enhanced protection.

On balance, the Commission is not persuaded to declare Abbott's Camp a liquor-restricted area. The Commission does not regard such a declaration as appropriate for Lot 2664 Alice Springs at this time. We briefly summarise hereunder our main reasons for believing the declaration not to be appropriate.

The novelty of the application. The application is a first for the township. Mr Geoff Shaw, who has been with the Tangentyere Council for over twenty years, concedes that what is proposed is "something of a pilot project.....the first stepping stone by a town". While it is the Commission's position that section 74 and Part VIII of the Liquor Act prima facie can apply to any area of land, by far the vast majority of such declarations have been in outlying areas where "grog running" has to be motorised and where the potentially draconian forfeiture provisions of Part VIII are a check or balance against easy temptation in an environment of reduced police presence. It is difficult to come to grips with the notion of grog running in relation to a suburban allotment in Alice Springs. Much of the wording of Part VIII of the Liquor Act seems to indicate a legislative focus on larger areas of country than a suburban allotment; in particular, section 79 would appear to assume that the only community to be affected by a declaration will be those people who reside in the relevant area, and section 85 (posting of warnings) is not susceptible to comfortable application to a suburban driveway.

Lack of input from the broader Alice Springs community. Mr Shaw's reference to the application being a first stepping stone for the town immediately highlights the point that the application has not been made by the "town". Regardless of whether or not a proper construction of the Liquor Act and particularly of Part VIII would allow the Commission to trawl for opinions from the broad community of Alice Springs in relation to an urban "dry" area in its midst, the applicant elected not to have any such opinions presented in this case, and the Commission is reluctant to declare such a restricted area in a vacuum of knowledge of broader public opinion.

In Dr McIntyre's evidence in relation to town camps, and Mpwetyerre in particular, all her references to community choices in this context are clearly limited to the community of the camp itself.

The Commission has been presented with the "advice" of the Alice Springs Town Council, per section 79(1)(d), and evidence in relation to the currency of that advice. Whereas such evidence is that Council has no objection to the application the Commission cannot accept that the Council's position should be taken to be significantly indicative or somehow democratically representative of the views of the broader Alice Springs community on such a special issue as a restricted area within the town without the benefit of some form of poll or survey. Admittedly counsel for the police would have preferred the Commission to have had regard to the Council sponsored (but Government funded) AARC survey report in determining the application, but even if Mr Howse had agreed we do not know that it could as yet constitute an opinion within the meaning of Part VIII, or be acceptable as a collective of such opinions. In any event, it was the applicant's choice that these proceedings not attempt to encompass the survey.

We endorse the sentiment of Mr Taylor that

the people of Alice Springs who live in this area and are residents of Alice Springs should be involved in trying to make life happier for everyone whether they are black or white and I don't think it's an issue that's a black and white issue.

The Commission could not agree more. The problem remains that the needs and wishes of those other residents of Alice Springs remain unknown. This is essentially an urban issue that would rarely arise outside of a township, and remains a source of considerable disquiet on the part of this Commission.

The ready and nearby availability of liquor. The distances from liquor outlets of the existing restricted areas in the southern region is the major factor of difficulty in obtaining alcohol within the areas, or in just arriving there intoxicated. The night patrols too operate as a check on inward liquor with their patrols of the buffer zones. This of course cannot be the picture in urban Alice Springs, where the exposure of a multitude of legitimate Aboriginal visitors to a multitude of lawful liquor outlets will be in no way noteworthy or remarkable. There can be no possible interception of liquor being walked from the nearby local outlets to the door of Mpwetyerre. To use a term coined by Superintendent Moseley, there will in effect be no moat of difficulty between liquor outlet and urban restricted area.

No drinking alternatives for those who may be excluded. The success of the Wuppa Town Camp in Tennant Creek as a restricted area is said by the police to be the result of the camp being split into two, with an area of it hived off for drinkers and excluded from the declaration of the remainder as a restricted area. Both elements of the relevant Tennant Creek community can get on with their preferred lifestyles "without upsetting each other". The drinkers do not impact on the lifestyle of the non-drinkers. Abbott's Camp is probably too small an area to allow such a division even if the Association was minded to proceed that way. Drinkers who were to step outside a restricted Abbott's Camp would find themselves immediately in an area in which drinking was also unlawful, by virtue of the so-called "two kilometre law". Some of those who support the application by Mpwetyerre Town Camp seem somewhat insensitive to the dilemma of such persons affected by the declaration sought, but in the Commission's view the problem is complex and is sufficiently relevant to the application to warrant careful consideration of possible options before being impacted or isolated by the camp being declared a dry area and the drinkers marginalised.

Inability of Commission to impose conditions on a declaration. In the Commission's view an important element of the evidence in support of the application was the intention of the Association for there never to be any permits under Division 2 of Part VIII. However, the Association may well have difficulty in the future in preventing an application for a permit by an individual resident, which would have to be heard on its particular merits at the time. The Commission is unable to assist the effectiveness of the undertaking in relation to permits by imposing appropriate restrictive conditions on any declaration. The Commission is enabled by the Act only to declare that a specified area of land shall be a restricted area in relation to all or specified types of liquor. On our reading of the Act no other conditions are possible. It can properly be remarked that in the Commission's view a carefully tailored set of conditions may well have gone a long way towards making a declaration workable in the case of Abbott's Camp, but

on the face of it the Act does not give the Commission any flexibility in this regard.

Management issues. The camp is private property, albeit for the purpose of communal Aboriginal living. The applicant is the lawful occupier who is experiencing difficulties with unwanted alcohol being brought on to the property by visitors who themselves may not necessarily be unwanted. Given the standard of the perimeter fencing, it appears to be within the power of the Association to go a lot further towards implementing such physical restrictions and exclusions as it should see to be desirable. The evidence is that the gate had been effective for a time, but use of the keys soon became too liberalised both because of traditional cultural obligations and the desire of some of the residents themselves to join in the consumption of liquor at the camp.

It is an article of faith on the part of the applicants that the problems of admissability of potential troublemakers arising from traditional obligations need to be addressed by the camp becoming a restricted area, that otherwise those obligations must result in the problems at the camp remaining a given situation. However, Mr Shaw (who described himself as Arunta and Katijt) testified that

just because one relative lives on a town camp doesn't necessarily give you the right, I suppose, of coming into the camp because you have got that social and cultural connection with your relative.

He went on to say that in his view there are times when you *can* say no to relatives, when they become rowdy; they *can* be expected to behave. With his own relatives, from as far away as Tennant Creek and Barrow Creek, it is a case of

you want to come and stay with me, you have to behave, you have to abide by my rules.....if you start creating problems you are going to have to leave.

Mr Tilmouth too testified that the choice is still there of locking the gate against the entry of problem visitors.

As unsympathetic as it may seem to the applicants, the problems do seem to the Commission to still be a matter of internal management for the Association at this time. It is not unreasonable of the police to view the application as attempting to have them provide in part a private security service for the Association when the Association is not itself attempting to implement the simplest of security measures which the evidence of Mr Shaw and Mr Tilmouth suggests is an initiative that is open to them. The application for the declaration of a restricted area is not seen by the Commission as being the inevitable next step or last resort that the applicants would have us accept.

Police offers on the table. The Commission was told by Superintendent Moseley that following through from the original decision on this application by the Chairman of the Liquor Commission, he did offer to Mr Bowden to meet with key personnel and have discussions, to "sit down with them" as an initiative which might perhaps have led to an allocation of a special resource. The offer was not taken up (which Mr Bowden acknowledges). In the course of this present hearing, Superintendent Moseley undertook on behalf of the police to have removed from Abbott's Camp any

intoxicated person in relation to whom the police may be called out. In carefully noting our reliance on that undertaking we also note that the efficacy of the statement must be underpinned by effective response times on the part of the police.

Conclusion. The foregoing topics of consideration are not presented in any particular order of respective weight in our deliberations, and we formally record our careful considerations of all those opinions itemised at page 9 of the written submissions dated 19 May 2000 of the solicitor for the applicants. Both counsel were agreed that the opinions of the police must be considered.

The Commission is not confident that all ramifications of declaring a suburban allotment a liquor-restricted area have been identified and thought through. The Commission's doubt weighs against granting the application.

In refusing the application, we are conscious of having been warned by Mr Howse that such a decision would be very demoralising for the applicants, and would be seen as a withholding of approval of their efforts. The decision of course should not be seen that way. The Commission is now very mindful that the determination and effort of Kevin Wirri and Doris Abbott and other members of the committee has been noteworthy, and their initiatives commendable. We are not insensitive to their weariness, nor to the view that the declaration of the camp as a dry area would be regarded as an acknowledgment of their good work.

On the evidence, there are good reasons to grant the application, and there are good reasons not to. The matter can only be decided on balance.

We should also emphasise that this decision determines only this application at this time. Relevant circumstances can change, and we do not see that any principle of "res judicata" or issue estoppel can operate against such an application being brought again in appropriate circumstances. It is a real possibility that there may be broad based community strategies and initiatives evolving from the AARC report that will take up the problems at the Mpwetyerre Town Camp, or which may produce an encouraging evidentiary environment for a renewal of the application.

John Withnall
(Presiding member)
8 August 2000